BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of	)	
	)	
Implementation of Section 402(b)(1)(A) of the Telecommunications Act of 1996	)	CC Docket No. 96-187
	)	
	)	

COMMENTS OF SOUTHWESTERN BELL TELEPHONE COMPANY

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Summary*

Congress has mandated that a deregulatory framework should be promoted and that LEC tariff filings should be streamlined. Thus, the Commission should not promulgate any requirement in this proceeding that would create more regulation or would not contribute to the streamlining of the tariff process.

For example, the Commission's two proposed interpretations of "deemed lawful" unduly complicate the plain meaning of the words. These interpretations could make the tariff review process even more complex if the subordinate proposals of the interpretations are adopted.

Also, the NPRM's recommendations make the support material to be filed with LEC tariff filings more burdensome. This emphasis is contrary to the Congressional mandate and cannot be reconciled with any definition of "streamlining."

Each and every issue in the NPRM must be resolved so as to make it simpler for LECs to file tariffs, and to have those tariffs placed into effect. The simplification of the LEC tariffing process will contribute to the competitiveness of the LEC industry in the forthcoming deregulatory environment. The maintenance of long-held perceptions regarding the need for lengthy notice and comment proceedings and subsequent investigations of LEC tariffs must end. Congress's intent to streamline the process should be heeded.

* All abbreviations used herein are referenced within the text.

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Southwestern Bell Telephone Company (SWBT), pursuant to the NPRM released September 6, 1996,[1] by the Federal Communications Commission (Commission), hereby comments on the issues raised in the NPRM. The "Telecommunications Act of 1996" (the 1996 Act) directs the Commission to "provide for a pro-competitive, de-regulatory national policy framework ...." In particular, Section 402(b)(1)(A)(iii) of the 1996 Act adds Section 204(a)(3) to the Communications Act,[2] which provides for streamlined tariff filings by local exchange carriers (LECs). In these Comments, SWBT describes the measures which the Commission should use to implement the requirements of Section 204(a)(3) pursuant to the stated goal of Congress.

I. "DEEMED LAWFUL" SHOULD BE GIVEN THE FULL MEANING INTENDED BY CONGRESS (Section III of NPRM)

According to the NPRM, Congress intended to streamline LEC tariff filings by providing that they would generally become effective within seven or fifteen days unless suspended and investigated by the Commission, and that Congress did not intend for the Commission to be able to

[1] Implementation of Section 402(b)(1)(A) of the Telecommunications Act of 1996, Notice of Proposed Rulemaking (NPRM), CC Docket No. 96-187, (FCC 96-367) (released September 6, 1996.)

[2] Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56.

defer tariffs eligible for streamlined filing. The NPRM thus tentatively concludes that Congress intended to foreclose Commission exercise of its general authority under Section 203(b)(2) to defer, up to 120 days, tariffs that LECs may file on seven or fifteen days' notice.[3]

SWBT agrees with this tentative conclusion. If the Commission were allowed to defer tariff filings for up to 120 days, Section 204(a)(3) would be rendered meaningless. Congress intended to streamline the tariff process, and an interpretation that LEC tariff filings can be deferred just as long as before the passage of the 1996 Act would provide no real streamlining.[4]

The NPRM also tentatively concludes that, by specifying that LEC tariffs shall be "deemed lawful," Congress intended to change the current regulatory treatment of LEC tariff filings,[5] and identifies at least two possible interpretations of "deemed lawful." SWBT respectfully disagrees with both interpretations forwarded by the NPRM.

Under the NPRM's first interpretation, the lawfulness of the tariff subsequently may be challenged either in a complaint proceeding, commenced pursuant to Section 208(a), or in an investigation commenced pursuant to Section 205. However, the NPRM questions whether the "deemed lawful" language would mean that the Commission is precluded from awarding damages for the period that a streamlined tariff is in effect prior to a determination that the tariff is unlawful.

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[3] NPRM at para. 6.

[4] Paragraph 13 of the NPRM states that the 1996 Act did not amend Section 203(b)(2) of the Communications Act, which permits the Commission to defer the notice period for tariff filings to a maximum of 120 days. SWBT strongly disagrees with this statement. As Paragraph 6 of the NPRM notes, Congress clearly directed foreclosure of this authority, at least as to LEC tariff filings. The authority might still be available for non-LEC tariffs under Title II, although SWBT cannot conceive of any future situations in which such use would be appropriate.

[5] NPRM at para. 7.

In fact, the specified language in the 1996 Act does have the effect of precluding the awarding of certain alleged damages. As the NPRM notes, "[t]he Supreme Court has held that once an agency has determined a rate to be lawful, the agency may not retroactively subject a carrier to reparations for charging that rate if the agency subsequently declares the rate to be unreasonable."[6] SWBT disagrees with the NPRM that the language in the 1996 Act creates a situation distinguishable from *Arizona Grocery*. A tariff revision that becomes effective under the streamlined procedures would be the lawful rate until the Commission concluded in a rate prescription under Section 205,[7] that a different "charge, practice, classification, or regulation" will be lawful for the future. Thus, a LEC is only liable for damages and other possible relief if it continues to apply the challenged rate or other term after the effective date of a Commission order finding a tariff unlawful.

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[6] *Arizona Grocery*, 284 U.S. at 390. As the NPRM further notes, *Arizona Grocery* construed the Interstate Commerce Act, which was the forerunner of the Communications Act and which provided for the same scheme of rate regulation. *See Las Cruces TV Cable v. F.C.C., supra; American Tel. & Tel. Co. v. F.C.C.*, 836 F.2d 1386, 1394 (D.C. Cir. 1988) (concurring opinion). The NPRM goes on to explain:

> This restriction is based on the adjudicative nature of an agency decision addressing past rates; the decision determines whether the carrier has violated the rules that governed its actions at the time the actions occurred. Ordering reparations where rates had previously been "deemed lawful" therefore would penalize a carrier for conforming its actions to standards in effect at the time the rates took effect. Prescriptions for future rates, on the other hand, are legislative activities. Like a legislature, an agency may modify standards governing future actions, but may not legislate retroactively so as to penalize past activities.

[7] 47 U.S.C. § 205.

This interpretation is consistent with the language of the 1996 Act. The NPRM cites Black's Law Dictionary for the definition of "deem." One of the words listed there is "to ....determine...."[8] This definition is sufficient to find that the statute intended to have the filings treated as though the Commission had "determined" them to be lawful.

This statutory language in the 1996 Act therefore limits any subsequent Commission review of a Section 208 complaint challenging a LEC tariff. In a Section 208 complaint hearing, the complainant has the burden of proof. The complainant would have the insurmountable task of overcoming this prior "determination" that the tariff is lawful. Only in the inconceivable circumstance where the Commission in a Section 205 proceeding finds that its prior "determination" should be reversed, and the LEC with the challenged tariff has not subsequently complied with the result of the Section 205 proceeding, could a complainant legitimately have precedent to carry its burden of showing that the tariff is unlawful. In all other cases the Commission's prior "determination" would be the controlling law.[9]

The alternative approach described by the NPRM is that "deemed lawful" could be interpreted, not to change the status of tariffs that become effective without suspension and investigation, but only to establish higher burdens for suspensions and investigation, such as by "presuming" LEC tariffs "lawful."[10] For the reasons stated above, this interpretation is insufficient

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[8] Black's Law Dictionary 374 (5th ed. 1981).

[9] This is not to say that all Section 208 complaints are foreclosed against LECs. For example, a Section 208 complaint might be appropriate over the application of a tariffed rate where the tariff is not clear. However, only a proceeding under Section 205 can require that the rate be changed, after it takes effect.

[10] NPRM at para. 12.

to fulfill the intent of the statute. If Congress had intended only to "presume" the filings lawful, it would have said so and not used the word "deemed."

The presumption of existing LEC price cap regulation is supplemented by the statute. The LEC price cap filings would be "deemed lawful" on the effective date, necessarily supplementing the "presumption," with a "determination" of lawfulness. The rules should be changed to reflect the change in the statute.

The NPRM solicits comment on the impact of all interpretations of "deemed lawful" on small entities, including those that are LEC customers.[11] SWBT believes that its interpretation would not adversely affect such small entities since their current participation in the tariff review process is rare, and since the Commission policy assumes that there is no need to allow for small entity/customer participation in the tariff filings of non-dominant carriers.

II. ALL LEC TARIFFS ARE ELIGIBLE FOR FILING ON A STREAMLINED BASIS (Section IV of NPRM)

The NPRM next tentatively concludes that all LEC tariff filings that involve changes to the rates, terms and conditions of existing service offerings are eligible for streamlined treatment. SWBT agrees with the Commission that "this [approach] would be most consistent with the purposes of Section 204(a)(3), and would simplify the administration of the LEC tariffing process as a whole."[12]

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[11] NPRM at para. 15.

[12] NPRM at para. 17.

SWBT, however, disagrees with the NPRM's suggestion that Section 204(a)(3) does not apply to charges associated with new services. While the Commission may believe that this approach is preferable as a matter of policy because it would allow more time to review tariff changes to services that have not already been subject to review, this position is inconsistent with the plain language of the statute.

Section 204(a)(3) encompasses all tariff filings by its plain language and does not intend any exemptions. The words "new or revised" include all possible tariff changes, identically matching the opening words of Section 204(a)(1), and clearly do not allow the Commission to hold back tariffs for new services from those to receive streamlined treatment.

This broadly inclusive approach is also the most simple to administer. Since Section 204(a)(3) matches Section 204(a)(1) in the description of the services covered, the Commission would be required to admit that the current definition of new services is not covered by 204(a)(1) if it advocated that those new services are not covered by 204(a)(3).

Further, it would make little sense to exclude new services from those receiving streamlined treatment since new services, by definition, can only add to the choices available to consumers.[13] New service introductions are essentially price reductions, either explicitly by lowering prices or

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[13] It is highly likely that new or revised charges will be in the form of a new service offering under the Commission's own definition of a new service. In the Second Report and Order in CC Docket No. 87-313, the Commission stated:

> A new service may, but need not, include a new technology or functional capability. Many new services are in essence, repriced versions of already-existing services. It is indeed rare for a carrier to offer a wholly different form of telecommunications service. As long as the pre-existing service is still offered and the range of alternatives available to consumers is increased, we will classify the service as new." Policy and Rules Concerning Rates for Dominant Carriers, 5 FCC Rcd 6786 (1990), at para. 314. (emphasis added).

implicitly by increasing value. Certain new services produce unambiguously lower prices (e.g., volume discounts and alternative pricing plans). Others, while newly offered, will be lower-priced alternatives to competitors' services, also resulting in unambiguously lower market prices to customers. Still other new services result from technological innovations and therefore can not be compared to an existing price standard (such as prevailing market prices for similar services). Nevertheless, consumers affirm the added value of new LEC services by choosing them over other alternatives. In the eyes of consumers, this increased value is equivalent to a price reduction. Consumer welfare is increased when customers can choose from a broader array of alternatives. Minimizing any delay in providing these new services fosters competition and promotes the public interest.

Congress could not have intended, by the language it drafted to allow new service filings to be the slowest to benefit consumers. The Commission recognized the need for this streamlined treatment of new services in its Second Further Notice of Proposed Rulemaking in CC Docket No. 94-1. The Commission stated that it was:

> concerned about the delay and burden that our current rules may cause in introducing new services. Further, many "new" services may actually be discounted versions of existing services. We are concerned that the current system may hinder the introduction of services, a result that is harmful to customers and competition.[14]

The NPRM further tentatively concludes that LECs may elect to file on longer notice periods, but that such filings would not be "deemed lawful." The NPRM provides no explanation for this reading of the language. The use of the word "may" applies to whether a LEC chooses to

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[14] Price Cap Performance Review for Local Exchange Carriers, 11 FCC Rcd 858 (1995) at para. 38.

make a filing at any point in time, not to the choice of whether a LEC wishes to have a tariff "deemed lawful." The rates should be deemed lawful whether filed on the streamlined 7 or 15 days' notice or something longer. The Commission's Rules addressing this issue should be revised to read like the current language in Section 61.58, which states "on at least 14 days' notice" or "on at least 45 days' notice."[15] Likewise, rules for nondominant carriers in Section 61.23(c) state: "Tariff filings of domestic and international nondominant carriers must be made on at least one day notice." Thus, this type of "at least" treatment should be applied to the new 7 and 15 day notice periods. Congress clearly did not intend to penalize LECs if they should elect to file on a longer notice period. There may also be timing reasons to file on more than the specified period.[16]

The NPRM also tentatively concludes that Section 204(a)(3) does not preclude the Commission from exercising its forbearance authority under Section 10(a) of the 1996 Act to establish permissive or mandatory detariffing of LEC tariffs, should the Commission choose to do so. SWBT notes, however, that the Commission's authority under Section 10 (a) is limited.[17]

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[15] 47 C.F.R. 61.58 (emphasis added).

[16] For example, if SWBT had filed a reduction in rates under the streamlining guidelines to be effective September 1, 1996, SWBT would have had to file its Transmittal on August 23, 1996 (a Friday, rather than on August 5, 1996, a Sunday) making it a 9-day filing. In such a case SWBT would not intend to lose the eligibility for streamlined treatment.

[17] See Comments of SBC Communications, Inc. filed April 25, 1996 in CC Docket No. 96-61, at p. 6. As SBC noted in this docket, the Commission's detariffing authority must weigh the effect on competition. If the Commission (either permissively or mandatorily) detariffs services in an industry, all participants in that industry that offer those services should have the same detariffing treatment.

III. ADMINISTRATION OF LEC TARIFFS SHOULD BE STREAMLINED (Section V of NPRM)

The NPRM solicits comment on a number of issues regarding the electronic filing of tariffs. Specifically, the NPRM seeks comment on whether the Commission should be responsible for organizing, posting, and supervising the tariff electronic filing system, or, whether each carrier should be given the responsibility for posting, managing, and maintaining its electronic file of tariffs, subject to Commission requirements. The NPRM expresses a preference for carrier administration of the electronic filing system. The NPRM also contemplates that the electronic filing system would permit parties to file petitions, and responsive pleadings, electronically.

A. Electronic Filings

The computer industry today generally provides three options that could be used for posting, managing and maintaining tariffs electronically: Dial-in Bulletin board-based solutions, Dial-in Database solutions and World Wide Web-based solutions. Of the three choices available, the World Wide Web based solution is by far the best for the reasons described below.

Bulletin boards have existed for years in the computer industry, but are gradually being replaced by the World Wide Web (WWW or Web). Access to bulletin boards requires a modem for each party requiring access. Although modem speeds have increased over the past few years, their throughput is still a fraction of what the Internet/WWW provides. For example, a three megabyte file could take over twenty minutes to transfer via a modem. This same file would take a few minutes, sometimes less than a minute, to transfer on the Web.

In addition to the throughput concerns of a bulletin board based solution, a Dial-in database introduces additional software complexities not embodied in a Web-based solution. Most databases require a software piece on the server and another software piece on each PC needing access. A

Dial-in Database solution would require installing software on each PC that needed access. If the server piece is updated to a new version of the database, each client piece must also usually be updated. Thus, additional software management is required on each PC. From a server perspective, a database is much harder to administer than a bulletin board system, which is harder than a web page.

The web-based solution is by far the optimal choice. In terms of throughput, the Web is the fastest. Another benefit is the Web uses an interface, called a browser, that even a computer novice can use without much training. Windows® 95 comes installed with a browser (Internet Explorer®) as part of the operating system. Other popular browsers, such as the Netscape Navigator®, are easily available and work in a number of computer environments. In fact, the browser interface is so popular and easy to use, Microsoft's next release of Windows® 95 will be browser-based. The computer industry is heading toward a browser-based interface to access data regardless of its location. The Commission already has a nicely developed web page, into which the filing of electronic tariffs could be incorporated.

The existing Commission's main web page (http://www.fcc.gov) could have a tariff "link." Clicking on this link would open a new page showing all the companies that have tariffs available electronically on the Commission web page. Each company listed would also have a link to their individual web page on the Commission Web site. Clicking on a company would open a new web page showing that company's available tariffs.

Upon opening a company's page, the user would have the option to view/print/search the tariff or download the tariff. The public would not have the ability to make changes to these tariffs as is the case with the Commission's own web site. If the download option is chosen, the selected

tariff will be in a specific format determined by its filename extension. For example, tariffx.wpd is in WordPerfect 6.0 format as identified by the "wpd" extension. The person downloading the file must have an application capable of reading this format. The Commission would determine the acceptable file formats.

All tariff filings, whether new, changes to existing pages or deletions, would be handled through electronic transmission/filing with the Commission. Each company would E-mail their entire tariff, as a binary file, to the Commission using an appropriate security mechanism. Once the filing becomes effective, the Commission would replace the appropriate existing tariff in the company's section of the Commission web page by the next business day after receipt. This method would not require the Commission to insert individual pages into the company's section, instead the entire tariff would be replaced.

This approach may be used for tariff filings with the Commission, and other filings, such as comments, reply comments in docketed proceedings, and requests for waiver. When a company E-mails the Commission, a descriptive message can indicate the company's request. For all filings, a security procedure is recommended, such as a pin number assignment for companies to use when sending E-mail files.

B. Post-Effective Tariff Review

The NPRM proposes that instead of reviewing LEC tariff filings before they become effective, the Commission would review tariffs after their effective date and at that time determine whether it is necessary to initiate a tariff investigation pursuant to Section 205 of the Act. This approach should be rejected as unnecessary and wasteful of Commission resources in light of the Congressional mandate, and harmful to LECs as well. Congress, as noted by the NPRM, intended

to provide for a "de-regulatory national policy framework."[18] Such a process of routinely re-reviewing filings after they take effect would squander the Commission's time and budget. Further, the LECs and their customers are injured by this approach as the legality of each filing is questioned and/or LEC tariff filings are deferred for protracted periods of time.

The NPRM also notes that Section 204(a) of the Act provides that, when a tariff is filed, the Commission may either on its own initiative or "upon complaint" suspend and investigate the tariff,[19] and thus solicits comment on the extent to which Section 204(a) limits the Commission's ability to rely on post-effective tariff review.[20] Post-effective tariff review is limited to the procedural options available to the Commission under section 205.[21] The Bureau has ruled that once a tariff is filed and becomes effective, the Commission may not reject it summarily. In that ruling, the Bureau went on to add:

> The Communications Act authorizes the Commission to suspend and investigate a tariff before it takes effect or to initiate a proceeding after the tariff takes effect to ascertain the lawfulness thereof. Accordingly, to the extent these [post-effective] petitions seek summary rejection of effective tariffs, they seek a remedy beyond the scope of our authority.[22]

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[18] NPRM at para. 1.

[19] 47 U.S.C. Sec. 204(a)(1).

[20] NPRM at para. 24.

[21] "Section 204 of the Act, 47 U.S.C. § 204, applies only if we initiate a proceeding before the tariff takes effect...." Teleport Communications Group Operating Companies, Tariff F.C.C. No. 1; Bay Area Teleport, Tariff F.C.C. No. 1; MFS Telecom, Inc., Tariff F.C.C. No. 1; Eastern Telelogic Corp., Tariff F.C.C. No. 1; M H Lightnet Inc., Tariff F.C.C. No. 1, 8 FCC Rcd 3611, (May 11, 1993 Released).

[22] Id. at para. 7. (Footnotes omitted.)

Thus, the Commission is without authority to exercise Section 204-type proceedings after a tariff filing takes effect. While this interpretation is part of a Bureau ruling, the Commission has cited the order with apparent approval.[23]

The NPRM also solicits comment on whether the Commission should establish specific rules and procedures governing requests to review effective tariffs if it decides to place greater emphasis on such reviews in administering LEC tariffs.[24] For the reasons stated above, such procedures are unnecessary and would be contrary to the de-regulatory intent of the statutory changes.

C. Pre-Effective Tariff Review

The NPRM solicits comment on what measures, if any, the Commission should establish in order to be able to decide whether to suspend and investigate a transmittal within seven or fifteen days, and proposes that LECs file summaries of the proposed tariff revisions with their tariff filings that provide a more complete description than under current requirements. This summary would, in addition to summarizing basic terms and conditions, describe how proposed changes, if any, differ from current terms and conditions and also describe the expected impact on customers. The NPRM also proposes that LEC tariffs filed on a streamlined basis be accompanied by an analysis showing that they are lawful under applicable rules.[25]

The Commission should not adopt the NPRM proposals in this regard. The benefits of such requirements (if any) would not outweigh the additional burden that it would impose on the filing

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[23] Southwestern Bell Telephone Company Tariff F.C.C. No. 73, Transmittal Nos. 2297 and 2312, 11 FCC Rcd 3613 (1996), at fn. 42.

[24] NPRM at para. 24.

[25] NPRM at para. 25.

carriers. The existing rules associated with tariff transmittal letters (61.33) and tariff transmittal supporting information for non-price cap services (61.38) and price cap services (61.49) provide more than sufficient information to the Commission and interested parties. Transmittal letters must contain an explanation of the "nature and purpose" of the filing and a statement whether 61.38 or 61.49 rules apply. Non-price cap service filing supporting information must include an explanation of the changed or new matter, reason for the filing, the basis of ratemaking and extensive economic cost information as well as demand and revenue effects. Price cap service filing supporting information must include sufficient information to support the proposed index changes. If proposed prices are out of band or above cap, extensive further information is required.

As stated by the 1996 Act, a "de-regulatory national policy framework" is desired by Congress. The addition of summaries, a listing of changes, a description of customer impact, and a legal analysis can hardly be considered "de-regulatory." Parties that traditionally intervene in LEC tariff proceedings are not usually small entities. These companies, like MCI, AT&T, and Sprint, and carrier associations such as ALTS, have their own in-house legal and tariff analysis staffs that are entirely capable of determining the impact of a filing on them, or of performing their own legal analysis if they determine it to be necessary. The burden of proof should be placed on the party opposing the tariff, and thus the LECs should not be requested to provide a legal analysis. It is unreasonable in the name of "streamlining" to impose any additional burdens on filing carriers.

There is no reason to establish any presumptions of unlawfulness for categories of tariffs so as to permit suspension and designation of issues for investigation through abbreviated orders or public notices. This approach would be directly contrary to the plain language of the statute which holds that all filings are to be "deemed lawful" as explained above.

D. Tariff Changes

The NPRM requests comment on the appropriate treatment of tariff transmittals that contain both rate increases and decreases, tentatively concluding that the 15-day notice period should apply, and states that carriers wishing to take advantage of a 7-day period may file rate decreases in separate transmittals. SWBT disagrees with the NPRM's tentative conclusion that the 15-day notice period should apply to tariff transmittals that contain both rate increases and decreases and that carriers wishing to take advantage of a 7-day period may file rate decreases in separate transmittals.

Current rules allow carriers to file multiple publications, with separate effective dates, in one transmittal.[26] Requiring one notice period or separate filings is not "streamlining." SWBT uses this multiple filing process today to save filing fees and should be allowed to continue to do so in the future. Any changes to the rules should not require the filing of separate transmittals or the lengthening of the notice period.

For restructures of existing services that cannot be separated into different publications in the same transmittal, a price change should be measured at the basket Actual Price Index (API) level rather than at an individual rate element level to determine whether rates have increased or decreased. Under the current price cap rules, rate increases or decreases that do not result in an API that exceeds the price cap index (PCI) and that are within band limits, become effective on 14-day notice with no individual rate element constraints. Any Commission action to impose different notice periods based on individual rate elements that are part of overall service offerings would be an inappropriate attempt to impose rate element constraints (which the Commission has already

[26] 47 C.F.R. Section 61.33 (g)(1)

rejected). The Commission should not measure rate changes in a more stringent manner under a streamlined process where the rates are "deemed lawful" upon filing.

The NPRM also proposes to require carriers to specifically identify transmittals filed pursuant to Section 204(a)(3), and whether the transmittals contain rate increases, rate decreases, or both. The carrier would be required to use either a label on the front of the tariff or a statement in the transmittal letter.[27] This proposal is unnecessary. The best mechanism for alerting Commission staff and interested parties about the contents of a tariff transmittal is found in the current methods used by SWBT and other LECs. A notation is made on the tariff pages which indicates whether an increase (I) or reduction (R) has occurred. A quick perusal of the tariff pages is all that is necessary.

In addition, a typical SWBT Description and Justification (D&J) accompanying a new or restructured tariff filing contains a section describing the purpose of the filing and a service description and a section describing the development of the demand, cost and rates as well as a display of the revenue effect.[28] The D&J should not be required to identify whether the transmittal is filed pursuant to 204(a)(3) since all transmittals so qualify.

Under the electronic filing and browsing methods listed above, parties could examine the appropriate sections of transmittals of carriers of interest to them. It is unnecessary for the

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[27] NPRM at para. 26.

[28] If the filing involves an existing price cap service, a Tariff Review Plan (TRP) detailing all index calculations is included. A misunderstanding of the purpose or terms of a tariff filing seldom occurs. The current Commission practice with the most potential for confusion is the requirement for multiple revised TRPs when a previously filed transmittal is deferred at the end of a 45-day notice period. During this 45-day period multiple filings with TRPs built on top of the deferred filing may have been filed. This problem will be rectified with the shorter notice periods and elimination of the deferral mechanism.

Commission to maintain a list of interested parties and provide affirmative notice to them by E-mail when a LEC tariff is filed. Parties that wish to file comments on a LEC filing need only monitor the electronic filing postings to obtain all the notice that should be given. If a party is not willing to do this much, it should be presumed to have no opposition to the LEC tariff change. Prior to the electronic filing of tariffs, parties could use the services of Washington, D.C.-based law firms or other monitoring companies to keep abreast of the latest filings. This should only be necessary for a relatively short period of time as the proposals of SWBT for electronic filing can and should be implemented quickly.

SWBT agrees with the NPRM's tentative conclusion that the statutory notice periods of 7 and 15 days refer to calendar days, not working days or weekdays. Other time periods in the statute also appear to refer to calendar days, and there is no rationale for interpreting the Section 204 (a)(3) language any differently.

SWBT agrees that changes to the filing periods for petitions to suspend and reject LEC transmittals filed on 7/15 days' notice are necessary since the most abbreviated pleading cycle now available under the rules would not accommodate the filing of petitions and replies to LEC tariff changes made on seven days' notice. However, SWBT disagrees with the proposal that calls for petitions against those LEC tariff filings (that are effective within 7 or 15 days of filing) to be filed within 3 days after the date of the tariff filing and replies 2 days after service of the petition.

Instead, SWBT recommends that the Commission not establish a public comment period for such tariff filings, and it should state that such petitions will not be routinely accepted, just as it effectively precludes public comment on the filings of carriers that are allowed to make their filings on one day's notice. In the alternative, if the Commission determines that a public comment period

is necessary, such petitions should be due on the following business day, so as to give the streamlined tariffs the same opportunity to be commented upon as those of carriers that are currently allowed to make "streamlined" filings on one day's notice. Replies on such filings would be due two days after service of the petition, consistent with the Commission's recommendation for replies.

This proposal for eliminating, or reducing the comment period, does not violate any supposed right under Section 204 (a) for parties to comment on a carrier's tariff filing. If there was any such right, the Commission's procedures for one-day notice filings would effectively prohibit such comments on such filings. In the alternative, if such a right were found to exist, SWBT's alternative proposal for a one-day time limit for filing would satisfy it to the same extent that the current period for non-dominant filings does so.

SWBT agrees that determinations of due dates should be made under Section 1.4(j) of the rules, which provides that when a due date falls on a holiday or weekend, the document shall be filed on the next business day,[29] and also agrees that to the extent necessary in computing time periods, parties should be required to include intermediate holidays and weekends.

Also, if the Commission determines that a public comment period is necessary, all such petitions should be hand-delivered to all affected parties. Replies, however, should not be required to be hand-delivered. The Commission previously determined that the replies on 14-day filings need not be hand-served, even though the petitions were required to be served by hand or via facsimile.[30]

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[29] 47 C.F.R. § 1.4(j).

[30] Amendment to Section 1.773 of the Commission's Rules Regarding Pleading Cycle for Petitions Against Tariff Filings Made on 14 Days' Notice, 8 FCC Rcd 1683 (1993).

The Commission should not routinely impose a standard protective order whenever a carrier claims in good faith that information filed with a 7/15 day filing qualifies as confidential under relevant Commission precedent. In the past, confidential treatment has been requested primarily to protect competitively sensitive cost information. While the Commission may not be able to resolve these requests for confidential information on a case-by-case basis within the seven and fifteen day tariff review periods established by the 1996 Act, instances where the Commission requires substantial supporting material for tariff filings, especially for cost material with tariff filings, should become rare.

SWBT, through its parent company, SBC, has previously recommended that the Commission should no longer require cost support with tariff filings in light of the competition in the industry.[31] If the Commission's rules were revised as the SBC Brief has proposed in CC Docket No. 96-55 to eliminate the submission of cost support, there would be no need for protective orders.

In the alternative, a party concerned about a carrier's filing of changes to its tariffs based upon cost support not on the public record, should be required to show that the party has a compelling concern over the nature of the tariff changes, and that the party has a compelling reason for release of the information under a protective order. To the extent that a protective order is required, SWBT's view is stated in the SBC Brief in CC Docket No. 96-55 and is incorporated herein by reference. A protective order must afford the level of protection required by specific categories of confidential information.[32]

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[31] Brief of SBC Communications Inc., filed June 14, 1996, in GC Docket No. 96-55, In the Matter of Examination of Current Policy Concerning the Treatment of Confidential Information submitted to the Commission, pp. 6-7. (SBC Brief)

[32] SBC Brief at pp. 8-13.

E. Annual Access Tariff Filings

SWBT agrees that annual access tariffs are eligible for streamlined filing under Section 204(a)(3), and thus, at the carrier's option, could be filed seven or fifteen days prior to July 1. SWBT disagrees, however, with the NPRM's proposals for the changes to the TRP process.

The Commission proposes to require LECs to file a TRP (absent proposed rate information) with updated annual filing information on the basis that a TRP without rate changes would not be subject to the provisions of Section 204(a)(3). Bifurcating the filing of rate changes and the filing of the TRP information supporting the proposed rates is not justified.

The latest price cap annual filings contained few if any new issues that required extended analysis. (The only significant issue eliciting comment in SWBT's 1996 Annual Filing was the RAO 20 OPEB rate base issue.) The only future annual filing issue that currently appears to warrant more than brief analysis is the development of a moving average type of productivity factor. However, the work to resolve implementation of this issue could be severed from the annual filing process and completed prior to a 7-day or 15-day annual access tariff filing.

The filing TRP would then only document the selection of the productivity factor, to the extent a choice is necessary. Since the Commission's new exogenous cost rule limits tariff filing exogenous costs to those cost changes that have previously been addressed by rulemaking, rule waiver or declaratory ruling (See 61.45(d) [See also, First Report and Order, CC Docket No. 94-1]), it is much less likely that any contentious exogenous cost issue will arise in the future.

In any event, under the 1996 Act, price cap LECs cannot be required to submit their TRP prior to the date that they file their annual access tariffs. The more work that is required to be completed prior to the annual filing date, the less meaningful the annual filing process itself would

be. On the one hand, if all of the rate-determining information is required to be filed early, the benefits of the streamlined filing process would be effectively denied to annual filing companies in violation of the 1996 Act. On the other hand, if the rate-determining information is left to the 7/15 day filing, there would be little need to have the remaining information filed early, since most of the remaining data is already public and this data is generally not in dispute. Further, it makes little sense to allow rate of return LECs to file cost projections on 15-days' notice, but to require price cap LECs to file GDP-PI, X and exogenous changes on more than 15 days' notice.

F. Investigations

The Commission should not establish procedural rules to govern the hearing process in light of the shortened period in which the Commission must complete tariff investigations. Investigations should be rare in the future. For the individual occasions where an investigation is initiated, the process should be customized to fit the circumstances.

The NPRM also solicits comment on whether procedures should be established for informal mediation of tariff investigation issues, and what those procedures should be. Again, SWBT recommends that no procedural rules be established. Instead, the Commission should acknowledge that tariff investigation issues should be rare.

G. Notice Requirements

SWBT agrees with the NPRM that the existing rules specifying notice periods for LEC tariffs must be amended to conform to the streamlined notice periods for LEC tariffs established in Section 204(a)(3). The NPRM also notes that under the 1996 Act, LECs may choose to file tariffs on notice periods greater than seven or fifteen days' notice. SWBT agrees with the NPRM's proposal to allow LECs to file tariffs eligible for streamlined filing on any notice period greater than that permitted

under the statute. However, for the reasons stated above, such filings should not lose the eligibility for streamlined treatment.[33]

H. Other Rule Changes

To truly accomplish "streamlining" of the other aspects of the LEC tariff filing process, other changes should be made. Presently, price cap LECs must comply with either Part 61.38 or 61.49 depending on the regulatory classification of the service. The Commission should address in this proceeding the current support requirements for services excluded from price cap regulation as well as for new services to be included under price caps.

Currently, support requirements for rate changes and any restructures of price cap excluded services require the submission of: a) a cost of service study for the previous 12 months; b) a projection of costs for a representative 12-month period; and c) the revenue effect on other services (e.g. cross elastic effects).

These Part 61.38 requirements may be essential in a rate of return (ROR) environment but are unnecessary for price cap regulation. Under a ROR regulatory scheme, historical costs can be used as a tool to analyze the change in the revenue requirement which cannot be exceeded. As such, a review of rates designed to recover a Part 69 revenue requirement could be useful. However, a price cap LEC is not bound by the revenue requirements underlying a ROR scheme. As such, historical costs for price cap-excluded services do not appear to satisfy any meaningful purpose.

Likewise, the projected cost requirement should also be eliminated. The Part 61.38 rules have been virtually unchanged since the beginning of price cap regulation. Under ROR regulation the cost was synonymous with the revenue requirement, which, in turn, was typically the projected

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[33] See Section II, supra.